IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.1282/2006
Mahendra Kumar Vashnav
Vs.
State of Rajasthan & Ors.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.1293/2006
Smt. Rukma Devi & Anr.
Vs.
The State of Rajasthan & Anr.

Date of Judgment :: 2nd April, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Kapil Prakash Mathur for the appellant in SAW no.1282/2006.
Shri R.C. Joshi for the appellant in SAW no.1293/2006.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

As a common point is involved in these two appeals, they are disposed of by this common order.

The dispute relates to appointment on compassionate ground. In Special Appeal

no.1282/2006, the appellant applied for compassionate appointment on the death of his father, Parmeshwar Lal Vashnav who died on 7.3.2002, on 30.3.2002. On 3.5.2005, he was advised to submit application in the prescribed format which he did. On 5.8.2003 he was informed that he cannot be given compassionate appointment as there is no provision for such appointment in the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servant Rules, 1996 when any other member of the family of deceased employee is already in employment under the State Government, Central Government, Board, Corporation etc. The appellant does not deny that his elder brother is employed in government service. According to him, however, his elder brother had separated prior to the death of his father, and therefore he was of no help to the family. After serving legal notice, the appellant filed the writ petition which was dismissed by the learned Single Judge by the impugned order. He has now come to the Division Bench in appeal.

In Special Appeal no.1293/2006, the father of appellant no.2, Sohan Lal, died in harness on the post of driver on 11.1.1996. Appellant no.1, his wife, submitted application on

20.10.1996 for appointment of appellant no.2 on compassionate ground. On 17.7.1997, the application was rejected on the ground that one of the sons of Sohan lal, namely, Jaswant Singh was employed in government service. The appellant made representation to reconsider the case. The representation was ultimately rejected on 26.3.1998. The appellants then filed writ petition being S.B. Civil Writ Petition no.3544/1998 which was dismissed by the learned Single Judge. They have now come to the Division Bench in appeal.

The Rajasthan Compassionate Appointment of Dependants of Deceased Government Servant Rules, 1996 (in short, ‘the Rules’) have been framed by the Governor of Rajasthan in exercise of power under proviso to Article 309 of the Constitution of India to regulate the recruitment of dependants of deceased government servants on compassionate ground. The said Rules repealed the previous rules titled Rajasthan Recruitment of Dependants of Government Servants Dying While in Service Rules, 1975. Rule 5 of the Rules lays down the conditions subject to which appointment on compassionate ground can be made in government service. The rule so far as relevant for the purpose of these cases may be quoted as under:-

> “**5.Appointment subject to certain conditions.-**(1) When a Government servant dies while in service one of his/her dependants may be considered for appointment in Government Service subject to the condition that employement under these rules shall not be admissible in cases where the spouse or at least one of the sons, unmarried daughters, adopted son/adopted unmarried daughter of the deceased Government Servant is already employed on regular basis under the Central/any State Government or Statutory Board, Organisation/Corporation owned or controlled wholly or partially by the Central/any State Government at the time of death of the Government Servant.
>
> Provided that this condition shall not apply where the widow seeks employment for herself.
>
> (2) . . . . . .”

From bare reading it is manifest that where the spouse or at least one of the sons, unmarried daughters etc. of the deceased government servant is already employed on regular basis under the Central Government or any State Government etc. at the time of death of the government servant, appointment on compassionate ground in government service is “not admissible” i.e. not permissible. As the rule squarely stares at the face of the appellants, they have challenged the validity of the rule. However, the provision has been upheld by a Division Bench of this Court in the Board of Rajasthan & Anr. Vs.

Rajendra & Ors., 2001 (2) WLC (Raj.) 51 observing in Para 22 of the judgment as under :-

> “22. . . . . .This is a valid criteria and has an intelligible differentia and rationale behind it. It has got a reasonable nexus with the object sought to be achieved. . . . “

It was submitted that rule 5 can be applied to deny appointment on compassionate ground where the other son or daughter of the deceased government servant was living with him at the time of his death as a dependant member of the family; according to the counsel for the appellants, where the son/daughter had already separated from the father, the fact that he was in employment under the government etc. can not be a relevant factor for the purpose of compassionate appointment which is intended to provide financial help to the members of the bereaved family on account of the sudden and unexpected death of the government servant concerned.

Similar argument appears to have been advanced in Board of Rajasthan & Anr. Vs. Rajendra & Ors. (supra) which was repelled in these words –

> “ . . . .Such interpretation in our view is not warranted on the language of rule 5 which is an independent provision in the scheme of the rules and convey a

> definite meaning. While a son/daughter who is already employed may not be dependant on the deceased government servant, but at the same time he continues to be the member of the family and on that ground rule 5 of the Rules would immediately get attracted.

In State of H.P. Vs. Jafli Devi, (1997) 5 SCC 301, the Supreme had occasion to consider more or less a similar provision in the Office Memorandum dated 18.1.1990 on the subject of appointment of sons/daughters/near relatives of a government servant dying in harness in the State of Himachal Pradesh. Rule 5(c) of the Memorandum laid down that in all cases where one or more members of the family are already in government service or in employment of autonomous bodies/boards/corporations etc. of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family (with the exception of widow). In view of the said provision, the Director of Fisheries rejected the application of the respondent for compassionate appointment on the ground that one of the sons was already employed in government service and another son could not be given appointment on compassionate ground. The High Court however set aside the order and directed the authorities to

reconsider the case of the applicant. Allowing the appeal, the Supreme Court observed as under :-

> “In the present case the High Court appears to have been influenced by sympathetic considerations and hardship of the respondent to make a departure from the policy laid down by the Government in the Office Memorandum dated 18.1.1990. Under the said policy Harbans Lal, the second son of the respondent could not be given appointment on compassionate grounds since another son of the deceased employee was already in government service. Having regard to the said policy the application of the respondent seeking appointment for Harbans Lal had been rightly rejected by the Director of Fisheries by his order dated 31.3.1994. The High Court was in error in setting aside the said order passed by the Director of Fisheries and directing the appellants to reconsider the case of Harbans Lal for appointment on compassionate grounds.”

In S. Mohan Vs. Government of T.N., (1998) 9 SCC 485, the appellant was appointed after over ten years of the death of his mother when his brothers were already employed and his father was also receiving some pension. When these facts came to the notice of the authorities, service of the appellant was terminated. The Tamil Naidu Administrative Tribunal by an interim order directed the authorities to continue the appellant in service but later dismissed the application holding that the appointment was contrary to the government orders. On appeal, the Supreme Court held that the appellant was not entitled to

appointment on compassionate ground after ten years of the death of his mother; more so when at the time of the death of the mother who was not the sole breadwinner of the family, two sons were already employed and the father was also receiving small pension. Relying on Umesh Kumar Nagpal Vs. State of Haryana, (1994) 4 SCC 138, the Supreme Court observed that appointment on compassionate ground is not a vested right; the object is to enable the family to get over the financial crisis which it faces at the time of the death of sole bread earner and such appointment cannot be claimed over after the lapse of time when there is no crisis.

In LIC Vs. Asha Ramchhandra Ambekar, (1994) 2 SCC 718, the Supreme Court held that appointment on compassionate ground can not be made de hors the statutory regulations and instructions. By mode of compassionate appointment, the High Courts/Tribunal cannot confer benediction impelled by sympathetic considerations and the Court should ensure to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

In view of the express bar contained in rule 5(1) of the Rules (supra) – validity of which has already been upheld by this Court, and further in view of the admitted position that one of the sons of the deceased government servant was already employed under the State Government at the time of death, the appellants are clearly not entitled to any direction for appointment on compassionate ground. The submission that the elder sons are separate from the family, and therefore notwithstanding their employment the appellants are entitled to compassionate appointment, is not in accord with the rule which in no uncertain terms declares that employment under the rules “shall not be admissible” where spouse or at least one of the sons, unmarried daughters etc. of the deceased government servant is already employed on regular basis under the State Government etc. As observed in the Board of Rajasthan & Anr. Vs. Rajendra & Ors. (supra), notwithstanding their alleged separation they continued to be the members of the family.

Without intending to record any finding in the absence of any material on record, we may nevertheless observe that such plea of separation is invariably made to buttress the claim of

compassionate appointment. In view of the admitted position that the elder sons were already employed, it is not necessary to go deep into this aspect.

In Special Appeal no.1293/2006, the claim of the appellant is also fit to be rejected on the additional ground of delay. As seen above, the government servant concerned in this case died on 11.1.1996. The object of compassionate appointment, as is now well settled by catena of decisions on the point, is to provide immediate financial help to the members of the bereaved family so that they can overcome the crisis suddenly caused by the unexpected and premature death of the bread earner. Being basically an exception to the general rule of equality in public employment, any direction for compassionate appointment after over a decade would not be in consonance with the spirit and object of compassionate appointment. Reference may be made to the cases of Umesh Kumar Nagpal Vs. State of Haryana (supra), State of J&K & ors. v. Sajad Ahmed Mir, (2006) 5 SCC 766 and National Institute of Technology & ors. v. Niraj Kumar Singh, (2007) 2 SCC 481.

In the above premises, we find no error in the orders of the learned Single Judge dismissing the writ petitions of the appellants. Consequently, the appeals are dismissed.

[MOHAMMAD RAFIQ], J. **[S.N. JHA], CJ.**

Skant/-